

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olas Carayannis	Team: Team # 1	CCRB Case #: 201400277	<input type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury		
Incident Date(s) Friday, 12/27/2013 2:15 PM	Location of Incident: Parsons Boulevard and Jamacia Avenue; 103rd Precinct stationhouse		Precinct: 103	18 Mo. SOL 6/27/2015	EO SOL 6/27/2015
Date/Time CV Reported Thu, 01/09/2014 4:13 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/09/2014 4:13 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

[illegible]

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Smith	19039	954346	PBQ/S
2. SGT William Ditomaso	03680	926777	PBQ/S
3. POM Walter Warkenthien	07820	953559	PBQ/S
4. An officer			PBQ/S

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Frank Orourke	12745	954196	PBQ/S
2. SGT John Boyce	01233	943015	PBQ/S
3. POF Francesca Oreckinto	01279	954193	PBQ/S
4. POM Michael Perri	23370	953245	PBQ/S
5. POM Joseph Duerr	28539	953830	PBQ/S
6. POM Jarred Kuschner	13642	954036	PBQ/S
7. POM Nolan Lauterborn	29891	954050	PBQ/S
8. POM Michael Magioncalda	29056	954086	PBQ/S

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Smith	Abuse: At Parsons Boulevard and Jamaica Avenue, PO Christopher Smith searched the car in which § 87(2)(b) was an occupant.	
B. An officer	Abuse: At Parsons Boulevard and Jamaica Avenue, an officer searched the car in which § 87(2)(b) was an occupant.	
C.POM Walter Warkenthien	Abuse: At Parsons Boulevard and Jamaica Avenue, PO Walter Warkenthien searched the car in which § 87(2)(b) was an occupant.	
D.POM Walter Warkenthien	Discourtesy: At Parsons Avenue and Jamaica Avenue, PO Walter Warkenthien spoke discourteously to § 87(2)(b)	
E.SGT William Ditomaso	Abuse: At the 103rd Precinct stationhouse, SGT William Ditomaso authorized the strip-search § 87(2)(b)	
F.POM Christopher Smith	Discourtesy: At the 103rd Precinct stationhouse, PO Christopher Smith spoke discourteously to § 87(2)(b)	
	§ 87(2)(g), § 87(4-b)	

Case Summary

On December 27, 2013, at approximately 2:15 p.m., § 87(2)(b) was driving alone in his neighbor's vehicle which was a 2013 Nissan Altima. § 87(2)(b) had stents placed in his body to help him pass kidney stones. He was going to the hospital to have these stents removed. When he reached the corner of Jamaica Avenue and Parsons Boulevard in Queens, § 87(2)(b) was stopped by PO Christopher Smith from Patrol Borough Queens South, and PO1, PO2, and PO3 for dark window tints. § 87(2)(b) informed PO Smith that he had a window tint exemption sticker that was determined to be a forgery by the officers. § 87(2)(b) was arrested. PO Smith and PO1 then searched the front seats and glove compartment of § 87(2)(b)'s vehicle (**Allegation A and B**). PO Walter Warkenthien later arrived in an unmarked vehicle and searched the backseat of § 87(2)(b)'s vehicle (**Allegation C**). PO Warkenthien said, "Fuck him. Take him in" (**Allegation D**).

§ 87(2)(b) was transported to the 103rd Precinct stationhouse by PO Smith and PO Warkenthien. At the stationhouse, § 87(2)(b) was strip-searched, as per SGT DiTomaso's instructions, by PO Smith (**Allegation E**). § 87(2)(b) was placed in a holding cell where he asked for medical treatment as he needed to have his stents removed and he was in pain. PO Smith said, "Shut the fuck up, crack head" (**Allegation F**). § 87(2)(b) was transported to § 87(2)(b) and treated for the stents and a urinary tract infection. § 87(2)(b) was charged with possession of a forged instrument and dark window tints.

Mediation, Notice of Claim, and Criminal Histories

This case was not eligible for mediation. § 87(2)(b) § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. B5).

Subject Officers CCRB History

- PO Christopher Smith and PO Walter Warkenthien had been members of the service for two year and there are no substantiated CCRB allegations against them (encl. B1-2).
- SGT William Ditomaso has been a member of the service for 13 years and there are three substantiated CCRB allegations against him (encl. B4):
 - In case 200306668 the board substantiated an allegation of force, an allegation of discourteous language, and an allegation of offensive language against SGT Ditomaso. The board recommended charges for all three allegations. The NYPD dismissed the charges.

Conclusion

Identification of Subject Officers

PO Smith noted in his memo book and in his CCRB statement that PO Warkenthien transported § 87(2)(b) to the stationhouse in vehicle number 209 (encl. D1-16). PO Warkenthien noted in his memo book that he was in vehicle 209 (encl. F1-5) and that he was SGT Boyce's partner. SGT Boyce was the sergeant who verified the arrest and he affirmed that PO Warkenthien was his partner on the date of the incident (encl. G1-4). PO Warkenthien's memo book does not note where he was during this incident. Allegations C, D, and G were thus pled against PO Warkenthien.

All of the white male officers working at impact posts in the area at the time of the incident were interviewed (encl. H1-34). None of the officers interviewed acknowledged being present

for the incident and their memo books place them all elsewhere. § 87(2)(b) stated that PO O'Rourke was present at the location, but that PO O'Rourke did not search the vehicle. PO O'Rourke did not recall being present at the location and his memo book places him at a fraud job elsewhere (encl. H1-4). Furthermore, there were no females working impact posts on December 27, 2013 (encl. I1). Thus Allegation B was pled against an officer.

Investigative Findings and Recommendations

Allegation A: Abuse of Authority—At Parsons Boulevard and Jamaica Avenue, PO Christopher Smith searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) alleged that PO Smith searched his front driver and passenger compartments in his vehicle (encl. C1-9). PO Smith denied searching § 87(2)(b)'s vehicle (encl. D1-16). None of the other officers interviewed recalled PO Smith searching § 87(2)(b)'s vehicle. Without further witness testimony or evidence, the investigation was unable to determine whether PO Smith searched § 87(2)(b)'s vehicle. § 87(2)(g)

Allegation B: Abuse of Authority— At Parsons Boulevard and Jamaica Avenue, an officer searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) described the officer who searched his vehicle with PO Smith as a white male officer dressed in uniform who was in his mid-20s. He could not recall further details of this officer's pedigree. As shown above, the investigation was unable to determine the identity of the subject of this allegation. § 87(2)(g)

Allegation C: Abuse of Authority—At Parsons Boulevard and Jamaica Avenue, PO Walter Warkenthien searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) alleged that PO Warkenthien searched the back seat of his vehicle upon arriving at the location (encl. C1-9). § 87(2)(b) was already outside of the vehicle and in handcuffs at the time of the search of his backseat. § 87(2)(b) further stated that he handed PO Smith the window tint exemption tag before he was arrested. The vehicle was released to its owner, who is § 87(2)(b)'s friend, from the stationhouse later that day.

PO Smith documented PO Warkenthien's presence and his vehicle number in his memo book. PO Smith testified that PO Warkenthien searched underneath the front driver's and passenger's seats, in the center console, and around the seats of § 87(2)(b)'s vehicle. § 87(2)(b) was already outside of the vehicle and handcuffed when PO Warkenthien arrived. PO Smith indicated that he did not suspect § 87(2)(b) of any crime other than the forged window tint exemption tag and the dark tints on his windows. He did not suspect § 87(2)(b) of secreting any additional contraband in his vehicle and he described § 87(2)(b)'s demeanor throughout the encounter as calm. PO Smith believed that PO Warkenthien searched § 87(2)(b)'s vehicle as that was standard protocol. The vehicle was not vouchered and was later released to the owner (encl. D1-16).

PO Warkenthien denied being present for the incident and he told the CCRB that he did not recall searching § 87(2)(b)'s vehicle. None of the officers interviewed added any reason to believe the vehicle may have contained a weapon. § 87(2)(g)

In *Arizona v Gant* 556 U.S. 332 (2009) (encl. A1-17) the Court found that the search-incident-to-arrest exception to the warrant requirement of the *Fourth Amendment* applies to vehicles when police reasonably believe that the individual could access the vehicle and when

officers have a reasonable belief that evidence relating to the offense of which the individual was arrested could be found.

§ 87(2)(g)

Allegation D: Discourtesy—At Parsons Avenue and Jamaica Avenue, PO Walter Warkenthien spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that, after searching his vehicle, PO Warkenthien said to PO Smith. “Fuck him, take him in” referring to § 87(2)(b) (encl. C1-9). PO Smith (encl. D1-16) and PO O’Rourke (encl. H1-4) both denied hearing PO Warkenthien state this. PO Warkenthien (encl. F1-5) denied being present for the incident and denied ever saying this to § 87(2)(b)

§ 87(2)(g)

Allegation E: Abuse of Authority—At the 103rd Precinct stationhouse, SGT William Ditomaso authorized the strip-search § 87(2)(b)

It is not disputed that § 87(2)(b) was strip-searched at the stationhouse after he was arrested. § 87(2)(b) testified that prior to being arrested, he had a stent placed in his urinary tract that he was due to have removed on the date of incident. He was eventually taken to § 87(2)(b) Hospital and diagnosed with a urinary tract infection. § 87(2)(b) said that the stent caused discomfort and pain (encl. C1-9).

SGT Ditomaso (encl. E1-4) testified that he observed PO Smith frisk and search § 87(2)(b) before placing him in the holding cell. When PO Smith attempted to frisk his groin area, § 87(2)(b) complained of pain in his groin area as a result of a prior medical procedure. § 87(2)(b) said that his groin was painful to the touch. SGT Ditomaso authorized the strip-search of § 87(2)(b) so that officers did not further exacerbate § 87(2)(b)’s medical condition while fulfilling their mandate to insure the safety of prisoners in the holding cells. PO Smith (encl. D1-16) affirmed that SGT Ditomaso authorized the strip-search of § 87(2)(b) but he did not know why § 87(2)(b) was strip-searched. PO Smith affirmed that § 87(2)(b) complained of pain and was subsequently taken to the hospital.

Patrol Guide Procedure 208-05 (encl. A19-21) states that an officer is required to conduct a thorough search of an individual being brought into the holding cells to insure the safety of other prisoners. The supervising officer who authorizes a strip-search is required to have reasonable suspicion that an individual is concealing additional contraband that could not be discovered by previous search methods.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) alleged that PO Smith said, “Shut the fuck up, crack head” to him in the holding cells (encl. C1-9). None of the other individuals located in the holding cell with § 87(2)(b) were cooperative with the investigation (encl. C10). PO Smith denied saying this and none of the other officers interviewed heard PO Smith make this statement (encl. D1-16).

[illegible]

Investigator:	<u> </u>	<u>Nicholas Carayannis</u>	<u>February 27, 2015</u>
	Signature	Print	Date
Supervisor:	<u> </u>	<u> </u>	<u> </u>
	Title/Signature	Print	Date
Reviewer:	<u> </u>	<u> </u>	<u> </u>
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